HUNTON& WILLIAMS

1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

DOUGLAS DZIAK
DIRECT DIAL: 202-955-1880
EMAIL: ddziak@hunton.com

FILE NO: 60115.000009

January 4, 2002

Via Electronic Mail

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
600 17th Street, NW
Washington, D.C. 20508

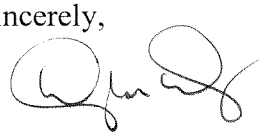
Re: Section 201 Investigation -- Certain Steel Products (Welded Tubular Other than OCTG)

Dear Ms. Blue:

On behalf of Atlas Tube Inc. LTV Copperweld, Dofasco Inc., Ispat Sidbec Inc., Stelco Inc., and Welded Tube of Canada Limited Canadian producers of welded tubular products, we hereby submit the attached comments in the above-referenced investigation.

Please contact the undersigned if you have any questions regarding this matter.

Sincerely,



William Silverman
Richard P. Ferrin
Douglas Dziak

Counsel to Atlas Tube Inc. LTV Copperweld, Dofasco Inc., Ispat Sidbec Inc., Stelco Inc., and Welded Tube of Canada Limited

Attachments
cc: A. Stephens

BEFORE THE
UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C.

PUBLIC DOCUMENT

CERTAIN STEEL PRODUCTS	)	
CARBON AND ALLOY TUBULAR PRODUCTS	)	**Section 203(a) & Section 312 (NAFTA)**
Welded Tubular Products	)	
Other Than Oil Country Tubular Goods	)	

COMMENTS OF CANADIAN RESPONDENTS: ATLAS TUBE INC., LTV COPPERWELD, DOFASCO INC., ISPAT SIDBEC INC., STELCO INC., AND WELDED TUBE OF CANADA LIMITED ON PRESIDENTIAL ACTIONS UNDER SECTION 203(a) OF THE TRADE ACT & 312 OF THE NAFTA IMPLEMENTATION ACT

William Silverman
Richard P. Ferrin
Douglas Dziak
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006
Counsel to Atlas Tube Inc. LTV Copperweld, Dofasco Inc., Ispat Sidbec Inc., Stelco Inc., and Welded Tube of Canada Limited

January 4, 2002

PREFACE

Why impose relief on Canada as a NAFTA partner when:

1. the largest domestic producer of welded pipe and tube, LTV Copperweld, testified that such relief would harm it not help it;

2. the United Steel Workers of America ("USWA"), which represents workers throughout the domestic industry, testified that imports from Canada are not a problem;

3. the major domestic welded tubular trade association opposes any relief on Canada;

4. most recent data show imports from Canada declining while non-Canadian imports are rising; so where is the threat from Canada?

5. three Commissioners concluded that imports from Canada do not contribute importantly to the threat of serious injury and a tie vote is not an affirmative finding;

6. relief on Canada entitles Canada to immediate compensation or retaliation?

I. SUMMARY OF THE ARGUMENT.

- In passing the North American Free Trade Agreement ("NAFTA"), Congress started the formation of a true North American market in which trade flows enhanced the economic strength of all the NAFTA parties. Moreover, business rationale rather than duties or quotas would dictate business decisions. In order to maintain the NAFTA's momentum of open borders and free trade, specific tests were included in the NAFTA and its implementing legislation to determine whether a NAFTA party should lose its entitlement to be exempted from any import relief granted by the President as part of a "global safeguards" investigation. Given NAFTA's express purpose to provide for advantages to NAFTA imports, the President should interpret Section 312 of the NAFTA Implementation Act in the spirit of this underlying trade policy. That is, in the absence of compelling evidence to the contrary, the President should not revoke the trade enhancing benefits granted to Canada in NAFTA.

- Welded tube and pipe is probably the best example of this integration within North America. As a result of NAFTA, domestic producers have increased exports to Canada and Canadian producers have invested in production facilities in the United States, employing the very workers intended for relief under Section 201. In fact, eight U.S. and Canadian companies now produce welded tubular products on both sides of the U.S./Canadian border and as a result, these companies have been able to integrate sales and production, resulting in companies that are better able to compete in global steel markets. This includes Canadian companies opening pipe mills in the United States, using domestic hot-rolled sheets and exporting pipe into Canada.

- Before revoking the economic benefits of the NAFTA, the International Trade Commission ("Commission") and the President are required to find that imports from Canada are a "substantial share" of imports and they "contribute importantly" to serious injury or the threat thereof. In its decision, the Commission did not find that imports from Canada contribute importantly to any serious injury or threat thereof. Rather, the Commission was evenly divided as to whether or not Canadian imports contribute importantly to the serious injury or threat thereof. An evenly divided Commission is not a finding with regard to imports from Canada. Three Commissioners found that imports from Canada do not contribute importantly to serious injury or threat thereof. Only one Commissioner out of six found imports from Canada to contribute importantly to actual injury and only two Commissioners out of six found imports from Canada to contribute importantly to the threat of serious injury. NAFTA benefits should not be revoked unless there is a strong and clear showing that such imports are injuring, or threatening injury to the domestic injury. There has been no such strong and clear showing with respect to imports of Canadian welded pipe and tube.

- Mr. David Mitch, executive vice president for LTV Copperweld, the largest domestic producer of welded pipe and tube, testified strongly against including Canada in any relief granted to the domestic industry because it would harm his company rather then help it.

- Like LTV Copperweld, the Steel Tube Institute, a trade association of leading producers of tubular products in the United States, testified that the Commission should not include imports from Canada in any remedy recommendation, even though the institute favors relief against imports from other countries.

- The United Steel Workers of America ("USWA") also testified that imports from Canada were not part of the domestic industry's problems and that imports from Canada should not be included in any relief. This testimony is compelling because the USWA represents workers in the largest domestic pipe and tube mills across the United States.

- The data in the Commission's investigation record show that imports from Canada do not contribute importantly to any serious injury or threat thereof. In interim 2001, Canadian imports declined roughly 27 percent while imports from non-NAFTA countries increased roughly 20 percent. Over the entire period of investigation imports of non-Canadian welded tubular pipe grew at approximately twice the rate of imports from Canada, which is an appreciable difference. Canada's share of imports has declined since 1996 to its lowest level over the course of the period of investigation in interim 2001. Imports from Canada are not price suppressing because over the course of the period of investigation, Canadian import values have remained substantially higher than those imports from other non-NAFTA countries.

- Chairman Koplan and Commissioner Miller found that imports from Canada contribute importantly to the threat of serious injury, yet they erred both in their legal and factual analysis. They bootstrap their "contribute importantly" analysis with their analysis of "substantial share," instead of performing the requisite separate analysis for each. Factually, Chairman Koplan and Commissioner Miller found that imports from Canada contribute importantly to the threat of injury, yet they perform no analysis using interim 2001 data that are in the Commission's record. By contrast, the Commission's decision for global imports makes over forty analytical references to interim 2001 data. Despite the fact that threat determinations are forward-looking, Chairman Koplan and Commissioner Miller give no reason for ignoring the most recent data (interim 2001), but instead relying solely on 1999 and 2000 data with respect to imports from Canada.

- The President must make the requisite "parallelism" finding as required by recent WTO decisions regarding the imposition of safeguard measures.

- Assuming arguendo that the President includes imports of Canadian welded pipe and tube in any relief, the President can and must impose a separate remedy on Canadian imports. The U.S. safeguards law permits a separate remedy for imports from Canada and NAFTA Article 802(5) of the NAFTA requires a separate remedy. NAFTA Article 802(5) requires that no NAFTA Party impose relief that would have the effect of reducing imports from another NAFTA Party below the trend of imports over a recent representative period, with an allowance for reasonable growth. Moreover, all of the tariff remedies proposed by the domestic industry and Commissioner Bragg would likely violate NAFTA Article 802(5), because they are likely to drastically reduce imports from

Canada below the trend of the most recent representative period, which the Commission found to be 2000.

- Any relief imposed on Canada entitles Canada to immediate compensation or retaliation under NAFTA.

II. FOR WELDED PIPE AND TUBE, NAFTA GOALS OF ECONOMIC INTEGRATION, CROSS-BORDER INVESTMENTS AND INCREASED TWO-WAY TRADE ARE BEING ACHIEVED AND THESE BENEFIT U.S. MILLS AND U.S. WORKERS.

The North American Free Trade Agreement ("NAFTA") was established to enhance trade between NAFTA partners and specifically provides a trade-enhancing preference for imports from Canada and Mexico over imports from non-NAFTA countries.[1] In passing NAFTA, Congress initiated the formation of a true North American economic market in which trade flows enhanced the economies of all of the NAFTA parties, and business rationale rather than duties or quotas dictate business decisions.

Canada is exempt from safeguards relief unless certain specific tests are met. The purpose of these tests is to guard against reversing the trade enhancing effects of NAFTA and hindering the creation of the North American market. Underlying these tests was the idea that Canada and Mexico presumptively should be exempt from safeguard relief unless very high thresholds for including them were reached. Given NAFTA's expressed purpose to provide an advantage for NAFTA imports, the President should interpret these tests[2] in the sprit of this underlying policy.

Welded tubular products other than OCTG ("WTP") are probably the best example of NAFTA's trade enhancing policy working as intended with the increased integration, trade and cross-border investment between Canada and the United States. As a result of NAFTA, domestic producers have increased exports to Canada, and Canadian producers have invested in

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[1] Statement of Administrative Action Accompanying the North American Free Trade Agreement ("SAA"), as published in H. Doc. 103-159, 103d Cong., 1st Sess. (1993), at 681-82.

[2] 19 U.S.C. § 3372(a).

production facilities in the United States, employing the very workers intended for relief under Section 201.

A. Eight Companies Now Produce Welded Tubular Products on Both Sides of the U.S./Canadian Border and Have Integrated Sales and Production Across the Border.

U.S. and Canadian producers of WTP have grown increasingly integrated through cross-ownership and enjoy a mutually beneficial interdependence. This integration across the U.S.-Canadian border allows WTP producers to offer local supplies to customers in diverse geographic regions. It also allows WTP producers to serve these different geographic markets based on the location and cost, rather than based on trade distorting tariffs or quotas.

The following table illustrates the degree of cross-border integration, showing the eight WTP producers that have operations on both sides of the border.

Company	U.S. Operations	Canadian Operations
LTV Copperweld	10 U.S. mills	4 Canadian mills
Maverick Tube	Missouri, Washington	Prudential Steel, Alberta
Atlas Tube	Michigan	Ontario
Bull Moose Tube	Missouri	Ontario
IPSCO Inc.	Iowa, Arkansas, and Nebraska	Saskatchewan and Alberta
Nova Steel	Pennsylvania	Quebec, Ontario
Oregon Steel Mills/Camrose Pipe Co.	Oregon	Alberta
Welded Tube of Canada	Ohio	Ontario

As these WTP producers are operating on both sides of the border, more steel is flowing from the United States to Canada and vice versa, just as Congress envisioned under NAFTA.

The testimony offered at the International Trade Commission's (the "Commission") hearings affirms the benefits associated with this interdependent trade relationship. For example, in testimony to the Commission, Mr. David Mitch, vice-president of LTV Copperweld's tubular products division testified that LTV Copperweld enjoys savings and rationalization of sales markets among mills as a result of this integration. LTV Copperweld is headquartered in the

United States and is the largest producer of WTP in the United States and in North America.

> If a U.S. customer is closer to a Canadian plant than the U.S. plant, then their product will come from the Canadian plant. The reverse is also true as well. With Canadian customers -- company customers being closer to our U.S. plants, they will be served by those U.S. plants. Our company strategy has been to integrate our Canadian and U.S. production and sales to achieve the most efficient cost.[3]

Atlas Tube and Welded Tube of Canada testified that they also engage in the same cross-border trade. Mr. Barry Zekelman of Atlas Tube stated that approximately 40 percent of the WTP it produces in its Michigan plant is exported to Canadian customers.[4]

B. Domestic Pipe Producers Owned by Canadian Producers Buy Domestic Hot-Rolled Sheet for Production of Pipes in the U.S. for Shipment into Canada and for Inputs for their Canadian WTP Facilities.

The record also shows that increased integration in the U.S. and Canadian WTP industry has resulted in benefits to both the producers of WTP as well as to integrated U.S. mills. As a part of the integration in the WTP production between the U.S. and Canada, WTP mills in the United States buy domestic hot-rolled for production of pipes and tubes that are then exported into Canada and Canadian WTP mills use U.S. produced hot-rolled sheet for WTP mills in Canada.

Atlas Tube testified that it purchased $35 million worth of steel from Michigan and West Virginia in fiscal year 2000 alone.[5] Atlas expects to purchase $75 million worth of steel in fiscal year 2001 and more than $100 million plus in fiscal year 2002 for its Canadian operation,

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[3] Testimony of Mr. David Mitch, Transcript for Steel Investigation, Inv. No. TA 201-73 {hereinafter Testimony} of Oct. 1, 2001 at 2473-74 (emphasis added).

[4] Testimony of Mr. Barry Zekelman, Tr. Oct. 1, 2001 at 2701-02.

[5] Testimony of Mr. Barry Zekelman, Tr. Oct. 1, 2001 at 2701.

exporting more than 300,000 tons of U.S. steel from the United States to Canada.[6] Mr. Robert Mandel of Welded Tube of Canada testified that "product frequently is produced in one jurisdiction and is shipped to the other; that is to say, U.S. manufactured product is often shipped to Canada from our Delta, Ohio plant, as well as vice versa."[7] Welded Tube of Canada's steel sourcing has been and is "virtually exclusive North American, with considerable U.S. manufactured steel finding its way into Canadian plants, as well as being the exclusive raw material for our U.S. operation."[8] Moreover, besides purchasing steel as an input in the production of WTP, these integrated steel producers also purchase tens of millions of dollars in consumables and capital goods from U.S. suppliers.[9]

III. THE BENEFITS OF NAFTA SHOULD NOT BE REVOKED UNLESS IMPORTS FROM CANADA MEET THE HIGH STATUTORY STANDARDS OF "CONTRIBUTING IMPORTANTLY" TO THE THREAT OF SERIOUS INJURY.

The purpose of NAFTA is clear. NAFTA partners receive trade preferences, as part of the creation of an integrated North American market. Congress required that these trade preferences be revoked only after careful consideration and only if certain high criteria are satisfied. Under the NAFTA Implementation Act, the President is prohibited from revoking these trade preferences, unless he finds that imports from Canada both account for a "substantial share" of imports and "contribute importantly" to the serious injury or threat thereof.[10]

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[6] Testimony of Mr. Barry Zekelman, Tr. Oct. 1, 2001 at 2701.

[7] Testimony of Mr. Robert Mandel, Tr., Oct. 1, 2001 at 2704.

[8] Testimony of Mr. Robert Mandel, Tr., Oct. 1, 2001 at 2703.

[9] See, e.g., testimony of Mr. Barry Zekelman, Tr. Oct. 1, 2001 at 2702.

[10] In determining the nature and extent of action to be taken under Chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from a NAFTA

(continued...)

A. Three Commissioners Concluded that Imports from Canada Do Not Contribute Importantly to Any Present Serious Injury, or Threat Thereof.

Three Commissioners concluded that imports of Canadian WTP did not contribute importantly to any serious injury or threat thereof. Consequently, each of these Commissioners recommended that no remedy be applied to imports of Canadian WTP. Moreover, of the three Commissioners finding that Canada "contributed importantly" to serious injury, only one concluded that Canadian imports were causing actual injury to domestic WTP producers. Two Commissioners found that the domestic industry was threatened with serious injury from imports and that imports from Canadian were contributing importantly to this threat. However, as analyzed more fully below, imports from Canadian have declined while non-NAFTA imports increased during the interim period of January through June 2001, which is the period most germane in a threat determination.

B. The Commission's 3-3 Tie Vote is Not an Affirmative Finding of Contributing Importantly.

The Commission's tie vote is not a finding that imports from Canada are contributing importantly to the domestic industry's injury.[11] Pursuant to statute, the Commission must make a finding that imports from Canada "contribute importantly" before recommending that the President revoke the trade preferences granted under the NAFTA. [12] Given the strong statutory basis for not revoking these trade preferences, the President should not consider an equally

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country if the President makes a negative determination under subsection (a)(1) or (2) of this section with respect to imports from such country. 19 U.S.C. § 3372 (a)-(b).

[11] The Commission is required to "find and report to the President" whether imports from a NAFTA country "contribute importantly" to the serious injury, or threat thereof. See 19 U.S.C. § 3371(a). The President must still make the final determination whether NAFTA imports are in fact contributing importantly. See 19 U.S.C. § 3372(b).

[12] 19 U.S.C. § 3371(a), § 3372(a).

divided Commission vote to be a finding that Canada "contributes importantly" to the domestic industry's serious injury, or threat thereof.[13]

C. NAFTA Benefits Should Not be Revoked Unless the Showing is Strong and Clear.

In light of the pro-trade policy of NAFTA, the President should not revoke the trade preferences granted under NAFTA without the requisite finding that Canadian imports are part of the problem. Out of three Commissioners finding that Canada contributed importantly to serious injury, or the threat thereof, only one found actual current injury. The other two Commissioners found Canada to be contributing importantly to the threat of serious injury. Current import statistics do not bear out these two Commissioners' conclusions regarding imports from Canada "contributing importantly" to the threat of serious injury. Year 2000 was Canada's highest level of WTP imports, yet five of six Commissioners found no actual injury. Yet in interim 2001, imports of Canadian WTP have declined 27 percent, while non-NAFTA imports have increased by 20 percent.[14] This is hardly a strong showing that Canada is contributing importantly to the threat of serious injury, which would warrant revoking these NAFTA trade preferences. Moreover, if the President finds that Canadian imports do not contribute importantly to the threat of injury and they are not included in relief now, the

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[13] While not identical to this Section 201 investigation, the Commission has once before faced a tie vote in a NAFTA matter and the Commission's treatment of that tie vote is instructive. In its *Broom Corn Brooms* Section 201 and NAFTA 302 investigation, the Commission reached a three to three vote as to whether or not provisional relief should be granted with respect to imports from Mexico. The Commission, in refusing to grant provisional relief stated "in the absence of a majority Commission vote, the Commission made a negative determination." See Broom Corn Brooms, USITC Inv. No. TA 201-65 and NAFTA 302-1, Aug. 1996 at I-8, footnote 2. Similarly, in light of the special pro-trade intent of NAFTA, the President should not recommend remedies on Canadian imports in the absence of a clear finding that these imports are "contributing importantly."

[14] ITC Prehearing Staff Report at Table TUBULAR-C4.

domestic industry is not without recourse if Canadian imports later surge enough to undermine the effectiveness of the action.[15] There is no such surge provision for non-NAFTA countries. That is, if imports from Canada later cause a problem, the President can then fix that problem at that time, instead of revoking the NAFTA benefits now on the theory of a Canadian "threat" of serious injury.

IV. THE DOMESTIC INDUSTRY TESTIFIED THAT IMPORTS FROM CANADA DO NOT CONTRIBUTE IMPORTANTLY TO ANY SERIOUS INJURY OR THREAT THEREOF AND REQUESTED THAT CANADA BE EXEMPT FROM IMPORT RELIEF.

A. The Largest Domestic Pipe and Tube Company, Which is in Financial Distress, Testified that Given the Integration of Its North American Mills, Import Relief Would Harm It, Not Help It, and Therefore, It Opposes Including Imports From Canada in any Relief.

In the Commission's report, Chairman Koplan and Commissioner Miller erroneously state that no domestic producer of WTP took a position regarding Canadian WTP during the injury phase of the investigation.[16] This statement seems to be crucial to Chairman Koplan and Commissioner Miller, but it is wrong.

LTV Copperweld testified during the injury phase on October 1, 2001, that it opposed imposing relief on Canadian imports of WTP. This is particularly noteworthy because LTV Copperweld is the largest pipe and tube producer in the United States. Mr. David Mitch, executive vice president for LTV Copperweld, testified that "including Canada in {Section} 201 relief will cause more harm than benefit." The harm arises because it would reverse the integration strategy companies such as LTV Copperweld have employed to become more

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[15] See 19 U.S.C. § 3372

[16] See Steel, USITC No. TA-201-73, Pub. No. 3479, Determinations and Views of Commissioners, Vol. I (December 2001) at 167.

competitive in the global steel market. As Mr. Mitch explained, one of the primary business reasons for combining Canadian and U.S. mills to create LTV Copperweld "was to take advantage of synergies in steel buying, reduce administrative costs, rationalization of capacity and significant savings in freight costs." Mr. Mitch further explained that LTV Copperweld is "now saving millions of dollars annually and {sic} freight costs by being able to ship from the nearest plant to our customers. ... Having plants located closer to our customers yields tremendous savings. This particularly applies to our plants in Canada and the United States."[17]

Given the financial distress of LTV Copperweld's parent company, any relief that interferes with LTV Copperweld's ability to realize cost savings and efficiencies from the open border with Canada will make LTV's dire situation even worse. LTV Copperweld is in no position to have its business plans to improve competitiveness and reduce costs undermined by imposing Section 201 relief on Canada. Moreover, any remedy that hurts LTV Copperweld is contrary to the remedial intent and purpose of the safeguards law.

B. The Steel Tube Institute, Which Represents a Broad Range of Pipe and Tube Producers in the U.S., Opposes Relief Against Imports from Canada.

The executive director of the Steel Tube Institute, Mr. Tim Andrassy, the trade association comprised of the leading producers of tubular products in the United States, testified in favor of granting domestic producers relief. Mr. Andrassy stated "STI supports the imposition of significant and substantial remedy measures on imports of carbon and alloy welded tubular products." However, the STI took an entirely different position regarding relief on imports from Canada, testifying that "[w]ith respect to imports from Canada, STI urges the Commission to take into account the substantial integration of the Canadian and domestic markets, as well as the

[17] Testimony of Mr. David Mitch, Oct. 1, 2001 at 2473.

contribution of Canadian producers have made to the growth of the domestic markets for certain major product segments." Mr. Andrassy completed his testimony to the Commission by requesting that "imports of Canadian welded tubular products be excluded from any remedy recommendations the commission may make."[18] The fact the leading trade association of WTP producers opposes including Canada in any Section 201 relief shows that the statutory test of "contributing importantly" has not been met.

C. The United Steel Workers of America ("USWA"), Which is a Major Interested Party Representing the Domestic Industry, Opposes Relief Against Canada.

The USWA, which has the full standing to represent the entire industry, testified that import relief should not cover Canada. Mr. Leo Gerard, president of the USWA testified, the USWA represents "the vast majority of production workers in the steel industry." The USWA's membership includes steel workers engaged in the production of WTP. The USWA represents workers in the largest domestic pipe and tube mills across the country including Bull Moose Tube, Bethlehem Steel, LTV Copperweld, USX, Geneva and Wheatland Tube. As the union for the steelworkers, the USWA should be given standing and credibility to speak for the entire domestic industry.[19]

The USWA testimony shows that imports from Canada do not "contribute importantly" to any threat of serious injury. Mr. Gerard stated that "the USWA does not believe that imports

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[18] Testimony of Mr. Tim Andrassy, Nov. 8, 2001 at 735-36.

[19] The USWA emphasized that the union has standing in this investigation and that the "industry" is represented by the USWA because "the domestic industry includes the workers who produce the products just as much as it includes the corporate entities who own the facilities in which the products are produced." See United Steelworkers of America, Post-Hearing Brief on Stainless and Tool Steel Products, October 5, 2001 at 4.

from Canada are part of the problems" of the U.S. industry.[20] To include Canada in any form of relief, despite the opposition of the union representing the workers of the domestic industry does not serve the remedial purpose of Section 201. Simply put, the USWA understands that steelworkers in the United States benefit from the increased trade and investment that has taken place as a result of the increased trade and investment caused by NAFTA. By taking such a strong position against relief on Canadian imports, the USWA is telling the U.S. Government that tariffs, quotas and TRQs covering Canada will reduce the NAFTA benefits now enjoyed by U.S. steelworkers.

D. The Chairman of the House Steel Caucus Testified that Canada Should be Exempt From Relief.

Congressman Phil English, the Chairman of the House of Representatives Steel Caucus, also recognizes the importance of an integrated North American steel market. Congressman English testified that Canada should be exempt from any import relief.

> At the same time it is in the interest of U.S. steel producers, their employees, steel industry suppliers and customers to ensure that North American steel markets remain integrated by excluding Canada from any potential injury determination under this Section 201 investigation. In my view, U.S. steel exports to Canada have been growing much more quickly than Canadian exports to the U.S. and a relative balance exists in overall steel trade between these NAFTA partners.[21]

Thus, the Chairman of the House Steel Caucus agrees with the largest domestic producer of WTP, the largest WTP trade association, and the USWA, that Canadian imports of WTP do not

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[20] Testimony of Mr. Leo Gerard, Sept. 17, 2001 at 86 (emphasis added).

[21] Testimony of Hon. Phil English, U.S. House of Representatives for the 21st Congressional District of Pennsylvania, Tr., Sept. 19, 2001 at 381 (emphasis added).

cause or threaten to cause serious injury to the domestic industry.

V. DATA IN THE ITC'S RECORD SHOW THAT IMPORTS FROM CANADA DO NOT CONTRIBUTE IMPORTANTLY TO ANY SERIOUS INJURY OR THREAT THEREOF.

A. Imports from Canada Increased at an "Appreciably Lower Rate" Than Other Imports by a Wide Margin.

WTP imports increased across the board during the period of investigation ("POI"), in large part driven by strong growth in the U.S. construction and a rebound in the U.S. energy market. While Canadian imports increased during the POI, they did so at a much slower rate compared with the high growth rate of imports from all other countries. From 1996 to 2000, the volume of all WTP imports rose 67 percent and imports from all countries excluding Canada increased by 82 percent while imports from Canada increased 47.5 percent.[22] Under the statute, a NAFTA country should normally not be considered to "contribute importantly" to the serious injury or threat thereof by the Commission if the growth rate of imports from the NAFTA country is appreciably lower than the growth rate of total imports from all sources.[23]

B. Canada's Share of Total Imports Has Declined Since 1996.

As a result of the rapid growth in non-Canadian imports during the POI, Canada's share of imports fell from 1996 to 2000. In 1996, Canada's share of these imports was 43.8 percent.[24] By interim 2001, Canada's share of these imports declined to 31.7 percent.[25] Canadian WTP lost

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[22] See id.

[23] 19 U.S.C. § 3371(b)(2).

[24] ITC Prehearing Staff Report at Table TUBULAR-C4.

[25] See id.

import share in the United States to imports from other countries.[26]

C. In the Interim Period 2001, Imports From Canada Declined While Total Imports Increased.

In the interim period of January to June 2001, Canadian imports declined by roughly 27 percent.[27] Imports from all other countries, however, increased by a 20 percent.[28] This difference in the trends between imports from Canada and imports from all other countries is striking because of the two Commissioners found that Canadian imports were contributing importantly to the threat of serious injury to the domestic industry. Recent trends of imports of Canadian WTP, however contradict these two Commissioners' conclusion. Canadian imports are declining, and losing U.S. import market share.

D. Imports from Canada Have Held a Consistent Share of U.S. Consumption over the Period of Investigation.

Since 1996, imports from Canada have held a steady share of U.S. consumption. In 1996, imports from Canada held roughly 12.0 percent of U.S. consumption and in interim 2001, Canada held roughly 11.9 percent of U.S. consumption.[29] In stark contrast, in 1996, imports from non-NAFTA countries held roughly 13.7 percent of U.S. consumption, while by interim

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[26] See id.

[27] ITC Prehearing Staff Report at Table TUBULAR-C4.

[28] See id.

[29] ITC Prehearing Staff Report at Table TUBULAR-C4. Commissioners Okun and Hillman noted in the Commission's report, that there was a one-time spike in Canada's share of domestic consumption. As Commissioners Okun and Hillman also noted, however, a significant portion of this increase was attributable to one project that has since been completed. See Steel, USITC No. TA-201-73, Pub. No. 3479, Determinations and Views of Commissioners, Vol. I (December 2001) at 168-69.

2001 imports from non-NAFTA countries had surged to 23.3 percent of U.S. consumption.[30] Any serious injury or threat thereof to the domestic industry is not a result of the steady consumption share held by Canadian imports.

E. Canadian Import Prices Exceed Import Prices from Non-NAFTA Countries and Given Their High Level, Do Not Cause Price Suppression of Domestic Mills.

Canadian imports are not price suppressing relative to imports from other countries. Over the course of the POI, Canadian import unit values have remained substantially higher than those imports from other non-NAFTA countries. In 1996, Canadian import unit values were $597 per ton, while imports from all other sources were $560 per ton, a difference of $37 per ton.[31] By 2000, the unit value of Canadian WTP were $563 per ton, while the unit values of non-NAFTA imports had fallen to $476 per ton, a difference of $87 per ton.[32] Two Commissioners also recognized that imports from Canada were not price suppressing when they stated, "{i}ndeed, such welded pipe from Canada not only was priced higher than comparable pipe from other import sources, it was priced higher than comparable domestic pipe."[33]

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[30] ITC Prehearing Staff Report at Table TUBULAR-C4.

[31] ITC Prehearing Staff Report at Table TUBULAR-5.

[32] ITC Prehearing Staff Report at Table TUBULAR-5.

[33] See Steel, USITC No. TA-201-73, Pub. No. 3479, Determinations and Views of Commissioners, Vol. I (December 2001) at 169.

VI. TWO COMMISSIONERS WHO FOUND IMPORTS FROM CANADA CONTRIBUTED IMPORTANTLY TO THREAT WERE WRONG ON THE LAW AND WRONG ON THE FACTS.

A. Chairman Koplan and Commissioner Miller Have Applied an Impermissible Legal Standard to Evaluate Imports from Canada as Required by NAFTA.

Chairman Koplan and Commissioner Miller stated "... particularly the fact that Canada accounted for such a large percentage of total welded pipe other than OCTG to the U.S., we find that imports from Canada contribute importantly to the threat of serious injury caused by imports."[34] This statement implies that Chairman Koplan and Commissioner Miller found imports from Canada to contribute importantly largely because they account for a substantial share of imports.

The statute requires not one, but two independent findings in order to include Canada in any relief: a finding of "substantial share" of imports, and a finding that such imports are "contributing importantly" to the serious injury or threat thereof. Thus, the Commission is required to perform a distinct and separate analysis for each prong of this NAFTA test.[35] A NAFTA country does not lose the NAFTA preference unless its imports both account for substantial share of total imports and contribute importantly.[36] To rely on the fact that imports are a substantial share to prove that they contribute importantly, in effect, negates the second statutory condition. Although the statute states that the Commission "shall consider such factors as" changes in import share, the statute by its very terms does not allow the Commission to end its analysis there, because to do so would "bootstrap" the "contribute importantly" requirement

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[34] See Steel, USITC No. TA-201-73, Pub. No. 3479, Determinations and Views of Commissioners, Vol. I (December 2001) at 167.

[35] See 19 U.S.C. § 3371(c).

[36] See id.

with the "substantial import share" requirement. Instead, the statute goes on to define "contribute importantly" as "an important cause, but not necessarily the most important cause."[37] This provision clearly requires the Commission and the President to tie the volumes and import shares of the Canadian imports in particular to the serious injury or threat thereof.

B. Although the Commission Relied Heavily on Data From Interim 2001 in Determining that Overall Imports Were a Threat to the Domestic Industry, Chairman Koplan and Commissioner Miller Inexplicably Failed to Analyze the Interim 2001 Data to Evaluate Whether Canadian Imports Contributed Importantly to the Threat of Injury.

Chairman Koplan and Commissioner Miller, in determining that Canada contributed importantly to threat of serious injury, relied on 1999 and 2000 data rather than the most recent and relevant data from interim 2001.[38] Even though threat determinations are forward-looking and interim 2001 data are in the record, these Commissioners give no reasons for ignoring the most recent data and instead relying solely on 1999 and 2000 data.[39] By contrast, the Commission's opinion discussing global imports analyzed the import and domestic industry through the interim 2001 period. In this analysis, the Commission noted that numerous trends relating to the threat of serious injury existed in the interim 2001. In fact, in its global import analysis, the Commission makes over forty analytical references to interim 2001.[40] By contrast, Chairman Koplan and Commissioner Miller, in their NAFTA analysis, discuss Canada's interim 2001 statistics once, only to concede that imports from Canada have decreased in interim 2001

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[37] See 19 U.S.C. § 3371(c) (emphasis added).

[38] See Steel, USITC No. TA-201-73, Pub. No. 3479, Determinations and Views of Commissioners, Vol. I (December 2001) at 167.

[39] See id.

[40] See id.

without explaining why interim 2001 data are not the relevant data to analyze in their threat opinion.[41]

VII. THE PRESIDENT MUST MAKE THE REQUISITE "PARALLELISM" FINDING TO MAKE THE TREATMENT OF CANADA WTO COMPLIANT.

In order for the United States to meet its WTO obligations, it must, when determining the appropriate safeguard measures to impose on imports, make certain that the remedy and injury determination are consistent. The WTO, in *United States-Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*,[42] found that the United States violated its WTO obligations when it imposed safeguard measures on wheat gluten. In the original Wheat Gluten investigation,[43] the United States included imports from Canada when it made its injury determination, but then excluded Canada from the remedy, pursuant to its NAFTA obligations. The WTO appellate panel found that any safeguard investigation must be consistent with regard to the injury determination and the remedy imposed. When the United States failed to make a separate injury determination as to wheat gluten imports excluding Canada, it violated its WTO obligations.[44] Therefore, if the President, pursuant to statute, finds that Canadian WTP imports are not contributing importantly to any serious injury or threat thereof, then the President must include the requisite findings that WTP imports excluding

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[41] See id.

[42] *United States - Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, issued Dec. 22, 2000

[43] *Wheat Gluten*, USITC Inv. No. TA-201-67, Pub. No. 3088, issued March 1998.

[44] The WTO appellate decision requires what is known as "parallelism" between the injury determination and the remedy applied. That is to say, if a country imposes safeguards relief on imports, the same countries that are found included in the remedy, must be found to have caused the injury, *i.e.*, there must be a separate finding that those imports included in the remedy meet the requirements of the application for safeguards relief.

Canada are causing serious injury or a threat thereof to the domestic industry.

VIII. ASSUMING ARGUENDO THAT IMPORT RELIEF IS IMPOSED ON CANADIAN IMPORTS, NAFTA ARTICLE 802(5) OF NAFTA REQUIRES A SEPARATE REMEDY FOR CANADA THAT ALLOWS FOR CONTINUED GROWTH IN IMPORTS FROM CANADA.

A. U.S. Law Permits a Separate Remedy for Canada.

Section 201 contains no requirement that the remedy imposed be on a most favored nation ("MFN") basis. The remedy should be most effective in facilitating the efforts of the domestic industry to make positive adjustment to import competition.[45] The President, when determining what action to take has a menu of remedy recommendations from which to choose to help the domestic industry adjust to import competition.[46] However, nothing in Section 2253(e) or elsewhere in the U.S. safeguards statute requires these remedies to be applied on an MFN basis.[47] Thus, the U.S. statutory provisions give the President broad flexibility to fashion a remedy if it deems that separating Canada from relief versus non-NAFTA countries will best accomplish the statutory goal of Section 201. The testimony of LTV Copperweld, Steel Tube Institute, USWA, Atlas (Michigan) and Welded Tube of Canada (Ohio) during the ITC's investigation provides the President with persuasive evidence that import relief on Canada will harm the domestic industry rather than help it. Therefore to meet the statutory goal of facilitating the efforts of the domestic industry to make positive adjustment, Canada should be exempt from tariffs, quotas or TRQs.

B. A Recent WTO Panel Decision Confirms that a Separate Remedy for Canada is Permissible.

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[45] 19 U.S.C. § 2252(e)(1).

[46] 19 U.S.C. § 2253(e).

[47] 19 U.S.C. § 2252(e)(2).

As noted above, nothing in U.S. law prohibits the Commission from applying a separate remedy to a NAFTA party. Preferential treatment for a NAFTA party at the remedy stage, moreover, is permissible under the United States' WTO obligations. A recent WTO Dispute Panel decision[48] regarding the safeguard exclusion of Canada and Mexico makes clear that discriminatory treatment given to a free-trade area partner is permissible:

> We have already found that Article XXIV can provide a defence against claims brought under Article XIX. In effect, this finding touches on "the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994", since it means that Article XXIV may in certain circumstances prevail over Article XIX. We have also found that, consistent with the last sentence of footnote 1 of the Safeguards Agreement, Article 2.2 does not prejudge the interpretation of the relationship between Articles XIX and XXIV:8. Taken together, these findings lead us to conclude that Article XXIV can provide a defence against claims of discrimination brought under Article 2.2.[49]

While free-trade agreements run contrary to the WTO's MFN principle, the *Korea Line Pipe Dispute Panel* concluded that giving preferential treatment to a free-trade area partner provides a complete defense against a MFN complaint based on Section 2.2 of the WTO.

> By virtue of Article XXIV:8(b), a free-trade area will always result in positive discrimination in favor of the members of that free trade area in respect of "duties and other restrictive regulations of commerce … on substantially all the trade" between them.[50]

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[48] United States - *Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe From Korea, Report of the Panel*, WT/DS202/R, 29 October 2001 {hereinafter *Korea Line Pipe Dispute Panel.*} Counsel for the Korea Iron & Steel Institute testified that he saw absolutely no basis for "giving selected treatment to NAFTA countries from other countries." Testimony of Mr. Donald Cameron, USTIC Inv. No. TA-201-73, Nov. 8, 2001, transcript at 863. However, the *Korea Line Pipe Dispute Panel* decision, with which counsel for the Korean industry should be intimately familiar does just that.

[49] *WTO Line Pipe Panel Decision* at paragraph 7.158.

[50] *WTO Line Pipe Panel Decision* at paragraph 7.161.

The WTO panel concluded that the U.S. "is entitled to rely on Article XXIV as a defence to Korea's claims ... regarding the exclusion of imports from Canada and Mexico from the scope of the line pipe measure."[51] Therefore, the position of Canadian respondents in this investigation that imports from Canada should be exempt from import relief is in accord with the *Korea Line Pipe Dispute Panel's* decision.

If members of a free-trade area are permitted to exclude members of a free-trade area completely from any remedy applied as part of a safeguards measure, the same logic suggests that a member of a free-trade area also must have the more modest authority of applying a less restrictive measure to another member of a free-trade area vis-à-vis other WTO members outside of the free-trade area. The principle is the same: preferential treatment is permissible in a global safeguards action because NAFTA qualifies as a free-trade area.

C. Any Tariff Imposed on Canadian Imports Will Almost Certainly Violate NAFTA Section 802(5).

NAFTA Article 802(5) unambiguously states that no party may impose restrictions on a good in a safeguard action "that would have the effect of reducing imports of such {a} good from a Party below the trend of imports of the good from that Party over a recent representative base period with allowance for reasonable growth."[52] The domestic industry requested a tariff in the order of 40 to 50 percent, claiming such a tariff is necessary for the industry to adjust to import competition. The Commission's recommendation includes at least one recommendation for 30 percent tariff.[53]

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[51] *WTO Line Pipe Panel Decision* at paragraph 7.163.

[52] Article 802 (5), North American Free Trade Agreement (emphasis added).

[53] See Steel, USITC No. TA-201-73, Pub. No. 3479, Determinations and Views of Commissioners, Vol. I (December 2001) at 518.

All of the tariff remedies advocated by the domestic industry and by Commissioner Bragg with respect to WTP would violate NAFTA Article 802(5) by reducing imports from Canada below the trend in the most recent representative period of 2000. A 50 percent tariff would in drastically reduce imports from Canada. Canadian respondents acknowledge that neither the U.S. statute nor NAFTA Article 802 prohibit tariffs per se. However, it is the Canadian respondent's position that for any non-negligible tariff the President could not be reasonably certain that such a tariff will comply with the obligations of NAFTA Article 802(5).[54] Using COMPAS runs, a standard econometric analysis, the Canadian Respondents have calculated that even a relatively small tariff of 5 percent would have the effect of reducing Canadian imports by 9.8 percent. These data were submitted to the Commission. The more Draconian remedy suggested by the domestic industry would have the effect of reducing Canadian imports by roughly 53 percent with a 40 percent tariff. There is no evidence in the record that any tariff can be imposed on Canadian imports without having the effect of reducing the volume of imports from Canada below the recent representative trend, and thereby violating NAFTA Article 802(5).

In light of the fact that two of the three Commissioners found that imports from Canada "contributing importantly" only to the threat of serious injury, *i.e.*, no actual serious injury, the "representative time period" with respect to imports from Canada should be 2000. Any duty or quota that would have the effect of reducing Canadian imports below year 2000 levels would

[54] It may be possible that in some case one could devise a tariff rate low enough, for example where the product's demand is highly inelastic, such that the tariff would meet Article 802(5)'s requirements. Nothing in the record for Product 20, however, provides an empirical basis for such a determination.

violate NAFTA Article 802(5). The President, should not and cannot in accord with U.S. obligations impose the tariff suggested by the domestic industry on Canada.

IX. THE IMPOSITION OF IMPORT RELIEF ON CANADA RESULTS IN IMMEDIATE COMPENSATION OR RETALIATION, AS PERMITTED UNDER NAFTA.

If the President includes Canadian WTP products in the import relief as part of this Section 201 investigation, then Canada, pursuant to NAFTA Article 802(6), is entitled to immediate compensation.[55] While the United States can apply a safeguards relief for up to three years without compensation on a WTO Party, it must immediately compensate a NAFTA Party for such relief. If the United States fails grant Canada substantially equivalent compensation through negotiation, Canada has the right to retaliate immediately against the United States.[56] Therefore, any intended benefits related to the safeguards remedy will be greatly reduced after compensation to Canada is factored into the result. After the President accounts for this compensation and the other costs as required by statute, the costs of including Canada in any remedy heavily outweigh the benefits of doing so.[57]

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[55] NAFTA Article 802(6) states that "[t}he Party taking action pursuant to this Article shall provide to the Party or Parties against whose good the action is taken mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the action. If the Parties concerned are unable to agree on compensation, the Party against whose good the action is taken may take action having trade effects substantially equivalent to the action taken under paragraph 1 or 3." (emphasis added)

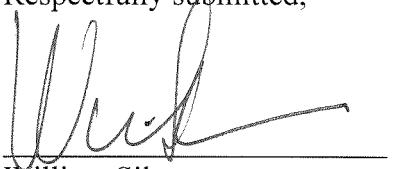
[56] The WTO requires that Parties wait three years before receiving compensation, which in effect means that compensation is required only for measures that last more than three years. See WTO Agreement, Agreement on Safeguards, Article 8(3). No such limitation exists in NAFTA.

[57] See 19 U.S.C. § 2253(a)(2).

X. CONCLUSION

For the foregoing reasons, respectfully requests that the President, pursuant to 19 U.S.C. § 3372, find that imports from Canada do not contribute importantly to serious injury or threat thereof. Therefore imports from Canada should not be included in any import relief the President proclaims on this product.

Respectfully submitted,



William Silverman
Richard P. Ferrin
Douglas Dziak
Counsel to Atlas Tube Inc. LTV Copperweld, Dofasco Inc., Ispat Sidbec Inc., Stelco Inc., and Welded Tube of Canada Limited

January 4, 2002